

APPEAL NO. 040131
FILED MARCH 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 17, 2003. The hearing officer determined that the appellant (claimant herein) did not have disability from September 8, 2003, through the date of the CCH, and that he was not entitled to change his treating doctor. The claimant files a request for review asserting that these determinations were contrary to the evidence. The respondent (carrier herein) replies that the evidence supported the hearing officer's decision.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). There was clearly conflicting evidence in this case concerning disability and based upon the above standard of review, we find no basis to reverse the hearing officer's decision concerning disability.

The hearing officer made a factual finding that the claimant requested a change of treating doctors to secure a new medical report that would take him off work. While there was conflicting evidence regarding this matter, we cannot say that this finding was contrary to the great weight and preponderance of the evidence. This finding alone is sufficient to support the conclusion of the hearing officer that the claimant was not entitled to change treating doctors pursuant to Section 408.022(d).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge